property and means of persons tried by them. By the Civil law Bishops had only Audientiam non Jurisdictionem Jil. 6 Quæs. Eccles. Audient. And by the Canons of the Greek Church have a blood Jurisdiction. It's true in Ancient times while the Papal and Romish Clergy's Usurpation of the rights of the sovereign and Civil Magistrate prevailed in Scotland, Prelates and Dignified Church Men here had not only a Spiritual, but also a Civil and Criminal Jurisdiction, which they Exercised by their officials and Bailliffs. And Persons were Excommunicated, not only for Scandals, but also for Civil Causes, as for Not payment of Debt or Not performing Contracts, or not Restoring Spuilzied goods, and upon the sentence of Excommunication Letters of Horning Caption pending and appriving were found forth, whereby the Debtors Escheat fell. Stat. Rob. 3 Cap. 6 Act 11 Parl. 6 J. 2 Act 9 Parl. 4 J. 5 Act 7 Parl. 4 Q. M. But after the Reformation Ecclesiastical Jurisdiction was Restrained from Civil and Criminal Matters, and Excommunication upon any such Account did Cease. And tho so long as Prelatical Government obtained in the Church, Letters of horning did pass upon Sentences of Excommunication 40 days after pronouncing thereof, which was a sufficient Ground for Caption and Escheat Act 25 Jac. 1 Act 23 Jac. 6 Parl. 1 Ch. 2. 6 July 1670 Arch Bishops and Presbytery of St. Andrews contra Pitillo. Yet Now No Civil pains or forfeiture or Disability whatsoever can follow upon sentences of Excommunication in Scotland Act 18 Jac. 2 Parl. Will. 10 A. Cap. 7 & 10. And all Civil Magistrates are prohibited to force or compell any person to appear when summoned, or to give obedience to any such sentence when pronounced, ibid. So that the Establishing a Spiritual Faculty of power to Church Men Distinct and Independent upon the Civil power, can Never Occasion Disorder in the State, when these two have Different objects, and the persons of Ecclesiasticks and their estates are Not withdrawn from the Jurisdiction of the Civil Magistrate.

Tit. 2.

Of Secular or temporal Jurisdiction.

Secular or temporal Jurisdiction is Exercised by the Secular powers, who Command and forbid in what Relates to the outward Man, Maintain every one in his rights, Dispossess Usurpers, Chastise offenders, and punish Crimes, by fines and punishments proportioned to what the publick peace Requires.

Temporal Jurisdiction may, according to Different Views of the Matter, be Various ly Distinguished As

(7) ad 27 Jac. 5. c. 3. But the Sheriffs, Bailiffs, Stewards officers, &c. are not Sufficient Judges in Criminal Cases, Deputies, as to answer for the Deputy in Civil matters if he is not Sufficient Judge in Criminal Cases, Act 2 Jac. 1. 1. 466. Dob. & Stal. Cap. 42.

As 1/ into proper or Ordinary, and Improper or Extraordinary Jurisdiction. 2/ Into Civil, Criminal, and Mixt Jurisdiction.

Sect. 1.

Of proper or Ordinary, and Improper or Extraordinary Jurisdiction.

Proper or Ordinary Jurisdiction is a power of hearing and Determining Causes, that flows Immediately from the King, and Subjects of all Ranks belongs to a Judge or Magistrate as such, by Virtue of his office, L. 3. Ff. de Jurisdict. Which is Subdivided into Patrimonial or Hereditary, and personal Jurisdiction.

Hereditary Jurisdiction is a power of Judging granted to a Man and his heirs. Which is Exercised by Lords of Regality, and Heritable Sheriffs. Such heritable Judges can Make Deputies, tho their Commission bear Sic ex proprio and being always fit to Judge, must be Understood to have a power to Substitute Deputies to Judge in their stead. A Sheriff Clerk was found Competent to Judge in Absence of the Sheriff by Virtue of a Commission from him, and the Deputy Clerk to officiate as Clerk to the Substitute Judge 24 January 1711 Binning contra Cockburn and Arnot. Judge and Clerk in Eodem Judicio. being Incompatible for the same person to sit both as Respicitur in Judice. In the Year 1755 The Granting of heritable Sheriffships was simply Discharged Act 11 Jac. 2. And the Granting of Regalities without Consent of Parliament Discharged Act. 43 Parl. 11 J. 2. The Reason of the Difference is, because an hereditary Sheriffship Faces the Constant Dependence of a Whole Shire upon a Subject. Whereas a Regality Subjects only a Mans own lands and Vassals to him. But Neither of these laws have been well observed.

Personal Jurisdiction is that which one Enjoys by Commission during pleasure, or quamdiu se bene gesserit upon the Account of personal qualification or Merit. One having a personal Jurisdiction cannot Make a Deputy, Unless his Commission Expressly Entitle him to that power. Such as grant Deputations, are Answerable for the Malversation of their Deputies Act 6. Parl. 1 J. 1. (8) Holding of Heritably in Scotland but Exercised in England and the Rank of Peers.

Improper or Extraordinary Jurisdiction is either Delegated or prorogated.

Delegated Jurisdiction is a power of Judging which flows